

AMENDED IN ASSEMBLY MAY 6, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2171**

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**Introduced by Assembly Member Wieckowski**  
**(Coauthor: Assembly Member Yamada)**  
(Coauthor: Senator Leno)

February 20, 2014

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An act to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, and to add Section 1569.425 to, the Health and Safety Code, relating to care facilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as amended, Wieckowski. Residential care facilities for the elderly.

Existing law, the Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of residential care facilities for the elderly, including, among other things, to be treated with dignity and respect, to personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident's representative, as described, of these and other specified rights and to provide them with a written copy. The bill would require the department to assess civil penalties, pursuant to

specified provisions, for a violation of these rights. The bill would also provide that a licensee who violates the provisions of the Residential Care Facilities for the Elderly Act may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or ~~both, and both~~. *The bill would authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any person or entity that violates that act, any regulatory requirements adopted by the department, or any right of the resident, as prescribed, but would require the resident to provide the person or entity alleged to have violated any of the rights described above with a specified written notice at least 30 days prior to the commencement of the action. The bill would prohibit the maintenance of an action for damages if the person alleged to have violated these rights ceases, corrects, or otherwise rectifies the alleged violation and provides the resident with an appropriate remedy within 30 days of the written notice.*

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 2.5 (commencing with Section 1569.261)  
2 is added to Chapter 3.2 of Division 2 of the Health and Safety  
3 Code, to read:

4

5 Article 2.5. Resident's Bill of Rights

6

7 1569.261. (a) It is the intent of the Legislature in enacting this  
8 article to adopt fundamental rights for all persons residing in a  
9 residential care facility for the elderly, as defined in Section 1569.2,  
10 to ensure that facilities respect and promote these rights, and to  
11 provide residents the ability to enforce their rights.

12 (b) In establishing this bill of rights, the Legislature intends that  
13 persons residing in residential care facilities for the elderly be

1 treated with dignity, kindness, and respect, and that their civil  
2 liberties be fully honored.

3 (c) A central purpose of the bill of rights is to strengthen a  
4 resident's right to make choices about his or her care, treatment,  
5 and daily life in the facility and to ensure that the resident's choices  
6 are respected. The Legislature intends to enhance each resident's  
7 autonomy and ability to make decisions concerning his or her life.

8 (d) The Legislature also intends that each residential care facility  
9 for the elderly provide a safe, comfortable, and homelike  
10 environment for its residents and that it protect residents from any  
11 type of physical or mental abuse, neglect, restraint, exploitation,  
12 or endangerment.

13 1569.265. Rights and liberties set forth in this article do not  
14 diminish a resident's constitutional rights or any other rights set  
15 forth in other state or federal laws and regulations. Persons residing  
16 in residential care facilities for the elderly shall continue to enjoy  
17 all of their civil and legal rights.

18 1569.267. (a) At admission, a facility staff person shall  
19 personally advise a resident and the resident's representative of,  
20 and give a complete written copy of, the rights in this article and  
21 the personal rights in Section 87468 of Title 22 of the California  
22 Code of Regulations. The licensee shall have each resident and  
23 the resident's representative sign a copy of the resident's rights,  
24 and the licensee shall include the signed copy in the resident's  
25 record.

26 (b) Facilities shall prominently post, in areas accessible to the  
27 residents and their representatives, a copy of the residents' rights.

28 (c) The rights posted pursuant to subdivision (b) shall be posted  
29 both in English and in any other language in a facility where 5  
30 percent or more of the residents can only read that other language.

31 (d) The facility shall provide initial and ongoing training for all  
32 members of its staff to ensure that residents' rights are fully  
33 respected and implemented.

34 1569.269. (a) Residents shall have all of the following rights:

35 (1) To be treated with dignity and respect.

36 (2) To personal privacy in accommodations, medical treatment,  
37 personal care and assistance, visits, communications, telephone  
38 conversations, use of the Internet, and meetings of resident and  
39 family groups.

1 (3) To confidential treatment of their records and personal  
2 information and to approve their release, except as authorized by  
3 law.

4 (4) To be encouraged and assisted in exercising their rights as  
5 citizens and as residents of the facility. Residents shall be free  
6 from interference, coercion, discrimination, and retaliation in  
7 exercising their rights.

8 (5) To a safe and homelike environment.

9 (6) To care, supervision, and services that meet their individual  
10 needs and is delivered by staff that are at all times sufficient in  
11 numbers, qualifications, and competency to meet their needs.

12 (7) To be served food of the quality and in the quantity necessary  
13 to meet their nutritional needs.

14 (8) To make choices concerning their daily life in the facility.

15 (9) To fully participate in planning their care, including the right  
16 to attend and participate in meetings or communications regarding  
17 the care and services to be provided in accordance with Section  
18 1569.80, and to involve persons of their choice in the planning  
19 process. The facility shall provide necessary information and  
20 support to ensure that residents direct the process to the maximum  
21 extent possible, and are enabled to make informed decisions and  
22 choices.

23 ~~(10) To consent to or reject medication, care, or services after~~  
24 ~~being fully informed of all material information relevant to the~~  
25 ~~resident's decision.~~

26 ~~(11)~~

27 ~~(10)~~ To be free from neglect, financial exploitation, involuntary  
28 seclusion, punishment, humiliation, intimidation, and verbal,  
29 mental, physical, or sexual abuse.

30 ~~(12) (A) To be free from physical and chemical restraints and~~  
31 ~~the inappropriate use of psychoactive drugs.~~

32 ~~(B) For purposes of this paragraph, the following definitions~~  
33 ~~shall apply:~~

34 ~~(i) "Chemical restraint" means any drug that is used for~~  
35 ~~discipline or convenience and not required to treat a medical~~  
36 ~~condition.~~

37 ~~(ii) "Physical restraint" means any manual method or physical~~  
38 ~~or mechanical device, material, or equipment attached or adjacent~~  
39 ~~to the resident's body that the resident cannot remove easily and~~  
40 ~~that restricts freedom of movement or normal access to one's body.~~

1     ~~(iii) “Psychoactive drug” means a medication that is used to~~  
2 ~~alter mood, level of anxiety, behavior, or cognitive processes.~~

3     ~~(13)~~

4     ~~(11)~~ To present grievances and recommend changes in policies,  
5 procedures, and services to the staff of the facility, the facility’s  
6 management and governing authority, and to any other person  
7 without restraint, coercion, discrimination, reprisal, or other  
8 retaliatory actions. The licensee shall take prompt actions to resolve  
9 residents’ grievances.

10    ~~(14)~~

11    ~~(12)~~ To contact the State Department of Social Services, the  
12 long-term care ombudsman, or both, regarding grievances against  
13 the facility. The facility shall post the telephone numbers and  
14 addresses for the local offices of the State Department of Social  
15 Services and ombudsman program, in accordance with Section  
16 9718 of the Welfare and Institutions Code, conspicuously in the  
17 facility foyer, lobby, residents’ activity room, or other location  
18 easily accessible to residents.

19    ~~(15)~~

20    ~~(13)~~ To be fully informed, as evidenced by the resident’s written  
21 acknowledgement, prior to or at the time of admission, of all rules  
22 governing residents’ conduct and responsibilities. In accordance  
23 with Section 1569.885, all rules established by a facility shall be  
24 reasonable and shall not violate any rights set forth in this chapter  
25 or in other applicable laws or regulations.

26    ~~(16)~~

27    ~~(14)~~ To receive in the admission agreement a comprehensive  
28 description of the method for evaluating residents’ service needs  
29 and the fee schedule for the items and services provided, and to  
30 receive written notice of any rate increases pursuant to Sections  
31 1569.655 and 1569.884.

32    ~~(17)~~

33    ~~(15)~~ To be informed in writing at or before the time of admission  
34 of any resident retention limitations set by the state or facility,  
35 including any limitations or restrictions on the facility’s ability to  
36 meet residents’ needs.

37    ~~(18)~~

38    ~~(16)~~ To reasonable accommodation of individual needs and  
39 preferences in all aspects of life in the facility, except when the

- 1 health or safety of the individual or other residents would be  
2 endangered.  
3 ~~(19)~~  
4 (17) To reasonable accommodation of resident preferences  
5 concerning room and roommate choices.  
6 ~~(20)~~  
7 (18) To written notice of any room changes at least 30 days in  
8 advance unless the request for a change is initiated by a resident,  
9 required to fill a vacant bed, or necessary due to an emergency.  
10 ~~(21)~~  
11 (19) To share a room with the resident's spouse, domestic  
12 partner, or a person of resident's choice when both spouses,  
13 partners, or residents live in the same facility and consent to the  
14 arrangement.  
15 ~~(22)~~  
16 (20) To select their own physicians, pharmacies, privately paid  
17 personal assistants, hospice agency, and health care providers.  
18 ~~(23)~~  
19 (21) To have prompt access to review all of their records and  
20 to purchase photocopies. Photocopied records shall be promptly  
21 provided, not to exceed two business days, at a cost not to exceed  
22 the community standard for photocopies.  
23 ~~(24)~~  
24 (22) To be protected from involuntary transfers, discharges, and  
25 evictions in violation of state laws and regulations. Facilities shall  
26 not involuntarily transfer or evict residents for grounds other than  
27 those specifically enumerated under state law or regulations, and  
28 shall comply with enumerated eviction and relocation protections  
29 for residents. For purposes of this paragraph, "involuntary" means  
30 a transfer, discharge, or eviction that is initiated by the facility,  
31 not by the resident.  
32 ~~(25)~~  
33 (23) To move from the facility.  
34 ~~(26)~~  
35 (24) To have relatives and other individuals of the resident's  
36 choosing visit at any time, subject to the resident's right to  
37 withdraw consent.  
38 ~~(27)~~

1 (25) To receive written information on the right to establish an  
2 advanced health care directive and, pursuant to Section 1569.156,  
3 the facility's written policies on honoring those directives.

4 ~~(28)~~

5 (26) To be encouraged to maintain and develop their fullest  
6 potential for independent living through participation in activities  
7 that are designed and implemented for this purpose, in accordance  
8 with Section 87219 of Title 22 of the California Code of  
9 Regulations.

10 ~~(29)~~

11 (27) To organize and participate in a resident council that is  
12 established pursuant to Section 1569.157.

13 ~~(30)~~

14 (28) To protection of their property from theft or loss in  
15 accordance with Sections 1569.152, 1569.153, and 1569.154.

16 ~~(31)~~

17 (29) To manage their financial affairs. The facility shall not  
18 require residents to deposit their personal funds with the facility,  
19 and no licensee or employee of a facility shall become a  
20 representative payee for any payments made to residents or serve  
21 as agent for a resident under a power of attorney.

22 ~~(32)~~

23 (30) Other rights as specified in this chapter or other state *or*  
24 *federal* laws or regulations.

25 (b) A licensed residential care facility for the elderly shall not  
26 discriminate against a person seeking admission or a resident based  
27 on sex, race, color, religion, national origin, marital status,  
28 registered domestic partner status, ancestry, actual or perceived  
29 sexual orientation, or actual or perceived gender identity.

30 (c) No provision of a contract of admission, including all  
31 documents that a resident or his or her representative is required  
32 to sign at the time of, or as a condition of, admission to a residential  
33 care facility for the elderly, shall require that a resident waive  
34 benefits or rights to which he or she is entitled under this chapter  
35 or provided by federal or other state law or regulation.

36 (d) Residents' family members, friends, and representatives  
37 have the right to organize and participate in a family council that  
38 is established pursuant to Section 1569.158.

39 (e) The department shall assess civil penalties pursuant to  
40 Section 1569.49 for a violation of a right specified in this section.

1     ~~1569.271. (a) If a resident lacks the capacity to exercise the~~  
2 ~~rights under this chapter or provided by federal or other state law~~  
3 ~~or regulation, the resident's representative shall have the authority~~  
4 ~~to exercise the resident's rights, but may not act in any way to~~  
5 ~~restrict them. The resident's incapacity shall be determined by a~~  
6 ~~court in accordance with state law or by the resident's physician,~~  
7 ~~unless the physician's determination is disputed by the resident or~~  
8 ~~resident's representative.~~

9     ~~(b) Persons who may act as the resident's representative include~~  
10 ~~a conservator, guardian, person authorized as agent in the resident's~~  
11 ~~valid advance health care directive, the resident's spouse, registered~~  
12 ~~domestic partner, or family member, or other surrogate~~  
13 ~~decisionmaker designated consistent with statutory and case law.~~

14     ~~1569.271. (a) Thirty days or more before the commencement~~  
15 ~~of an action for damages pursuant to Section 1569.425, the resident~~  
16 ~~or the resident's representative shall do both of the following:~~

17     ~~(1) Notify the person alleged to have violated any requirements~~  
18 ~~of this article, any regulatory requirements adopted by the~~  
19 ~~department, or any right of the resident provided by federal or~~  
20 ~~state law or regulation of the particular alleged violation.~~

21     ~~(2) Demand that the person cease, correct, or otherwise rectify~~  
22 ~~the alleged violation.~~

23     ~~The notice shall be in writing and shall be sent by certified or~~  
24 ~~registered mail, return receipt requested, to the residential care~~  
25 ~~facility in which the resident resides or resided or to the person's~~  
26 ~~principal place of business within California.~~

27     ~~(b) Except as provided in subdivision (c), no action for damages~~  
28 ~~may be maintained under Section 1569.425 if the person ceases,~~  
29 ~~corrects, or otherwise rectifies the alleged violation and provides~~  
30 ~~or agrees to provide an appropriate remedy to the resident within~~  
31 ~~30 days after receipt of the notice.~~

32     ~~(c) No action for damages may be maintained under Section~~  
33 ~~1569.425 upon a showing by a person alleged to have violated~~  
34 ~~any requirements of this article, any regulatory requirements~~  
35 ~~adopted by the department, or any right of the resident provided~~  
36 ~~by federal or state law or regulation that all of the following exist:~~

37     ~~(1) All residents similarly situated have been identified, or a~~  
38 ~~reasonable effort to identify those other residents has been made.~~

39     ~~(2) All residents so identified have been notified that upon their~~  
40 ~~request, the person will cease, correct, or otherwise rectify the~~



1 *practices, acts, or methods alleged to be in violation and provide*  
2 *an appropriate remedy to the residents.*

3 *(3) The person has ceased from engaging, or if immediate*  
4 *cessation is impossible or unreasonably expensive under the*  
5 *circumstances, the person will, within a reasonable time, cease to*  
6 *engage, in the alleged violation.*

7 *(4) The person has provided an appropriate remedy to the*  
8 *residents or will do so in a reasonable amount of time.*

9 *(d) An action for injunctive relief brought under the specific*  
10 *provisions of Section 1569.425 may be commenced without*  
11 *compliance with subdivision (a). Not less than 30 days after the*  
12 *commencement of an action for injunctive relief, and after*  
13 *compliance with subdivision (a), the resident may amend his or*  
14 *her complaint without leave of court to include a request for*  
15 *damages. The appropriate provisions of subdivision (b) or (c) shall*  
16 *be applicable if the complaint for injunctive relief is amended to*  
17 *request damages.*

18 *(e) Attempts to comply with this section by a person receiving*  
19 *a demand shall be construed to be an offer to compromise and*  
20 *shall be inadmissible as evidence pursuant to Section 1152 of the*  
21 *Evidence Code. Furthermore, these attempts to comply with a*  
22 *demand shall not be considered an admission of engaging in an*  
23 *act or practice declared unlawful under this article. Evidence of*  
24 *compliance or attempts to comply with this section may be*  
25 *introduced by a defendant for the purpose of establishing good*  
26 *faith or to show compliance with this section.*

27 SEC. 2. Section 1569.425 is added to the Health and Safety  
28 Code, immediately following Section 1569.42, to read:

29 1569.425. (a) A licensee who violates any provision of this  
30 chapter or regulations adopted by the department pursuant to this  
31 chapter, and whose violation presents an immediate or substantial  
32 threat to the physical health, mental health, or safety of a resident  
33 of a residential care facility for the elderly may be enjoined from  
34 permitting the violation to continue and may be sued for civil  
35 damages within a court of competent jurisdiction. An action for  
36 injunction or civil damages, or both, may be prosecuted by the  
37 Attorney General in the name of the people of the State of  
38 California upon his or her own complaint or upon the complaint  
39 of a board, officer, person, corporation, or association, or by a  
40 person acting for the interests of itself, its members, or the general

1 public. The amount of civil damages that may be recovered in an  
2 action brought pursuant to this section shall not exceed the  
3 maximum amount of civil penalties that could be assessed on  
4 account of the violation or violations. The licensee shall be liable  
5 for costs and attorney fees if the plaintiff prevails in an action  
6 pursuant to this subdivision.

7 (b) (1) A current or former resident of a residential care facility  
8 for the elderly, as defined in subdivision (k) of Section 1569.2,  
9 may bring a civil action against any person or entity that violates  
10 any requirements of this chapter, any regulatory requirements  
11 adopted by the department, or any right of the resident provided  
12 by federal or state law or regulation. The suit shall be brought in  
13 a court of competent jurisdiction. The licensee shall be liable for  
14 the acts of the licensee's employees. The licensee shall be liable  
15 for up to five hundred dollars (\$500) for each violation, and for  
16 costs and attorney fees, and may be enjoined from permitting the  
17 violation to continue. Injunctive relief granted under this section  
18 shall be deemed prohibitory, and shall not be stayed pending  
19 appeal. The statute of limitations for suit under this subdivision  
20 shall be three years, which shall not begin to run until the violation  
21 has been discovered. The current or former resident has the right  
22 to a trial by jury. The right to bring a civil action shall survive the  
23 death of the resident. An agreement by a resident of a residential  
24 care facility for the elderly to waive his or her rights to sue pursuant  
25 to this subdivision shall be deemed contrary to public policy and  
26 shall be void and unenforceable.

27 (2) *The right to bring a civil action against any person or entity*  
28 *for a violation of Article 2.5 shall be subject to the requirements*  
29 *of Section 1569.271.*

30 (c) The remedies specified in this section shall be in addition  
31 to any other remedy provided by law.

32 SEC. 3. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

O